

LEGAL COMMITTEE
99th session
Agenda item 11

LEG 99/11/1
10 February 2012
Original: ENGLISH

APPLICATION OF THE COMMITTEE'S GUIDELINES

**Collation and preservation of evidence following an allegation of a serious crime
having taken place on board a ship or following a report of a missing person
from a ship, and pastoral and medical care of victims**

**Submitted by the Philippines, the United Kingdom and the
Cruise Lines International Association (CLIA)**

SUMMARY

<i>Executive summary:</i>	This document responds to the call contained within resolution A.1058(27) for submissions related to guidance following allegations of a crime at sea and builds upon the concepts raised in document LEG 98/INF.3. Contained within the document is the justification and compelling need for this new unplanned output to be added to the biennial agenda of the Legal Committee.
<i>Strategic direction:</i>	6.4
<i>High-level action:</i>	No related provisions
<i>Planned output:</i>	No related provisions
<i>Action to be taken:</i>	Paragraph 17
<i>Related documents:</i>	LEG 98/INF.3, LEG 98/14; A 27/10/1, A 27/C.1/WP.2, A 27/INF.8; resolutions A.1037(27), A.1038(27), A.1058(27); LEG.1/Circ.6; MSC.1/Circ.1404 and LEG 99/INF.2

Introduction

1 This document is submitted under section 4.7 of LEG.1/Circ.6, Guidelines on the organization and method of work of the Legal Committee.

2 The twenty-seventh regular session of the Assembly considered document A 27/10/1 (Bahamas, Philippines, United Kingdom and United States) on proposed development of guidelines on the collation and preservation of evidence following an allegation of a serious crime taking place on board a ship or following a report of a missing person from a ship, and guidelines on the pastoral and medical care of victims. Following discussion of this document, a working paper with a refined proposal (A 27/C.1/WP.2 – Panama, United Kingdom and United States) was accepted and resolution A.1058(27) was adopted. This resolution invites Member States and other parties concerned to submit proposals to the Legal Committee to enable consideration of the issue raised in this resolution, taking into account that issues of criminal jurisdiction should be consistent with international law.

Crimes at Sea

3 Following a series of recent alleged crimes taking place on board ships, as well as a number of missing person incidents, it has become apparent to the co-sponsors that there is a lack of guidance available to masters as to how to deal with these situations.

4 In order for the full and complete investigation of serious crimes by criminal investigators, rather than those investigating under the Casualty Investigation Code (MSC.255(84)), the crime scene must be fully preserved to enable forensic investigation. This includes the collection of DNA evidence. Further, following an allegation of a sexual assault, the victim may require both pastoral and medical care. Again, there is no such guidance available to masters.

5 In order to bridge this gap, and following the call for proposals in resolution A.1058(27), the co-sponsors propose that the Committee should include the development of guidance on the collation and preservation of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of victims as a new unplanned output to be added to the biennial agenda of the Legal Committee.

IMO's objectives

6 Strategic direction 6.4 states "Increasing the emphasis on the role of the human element and safeguarding the human rights of seafarers in secure shipping". Therefore, the guidance envisaged in this submission would be in line with the objectives of the Organization.

Compelling need

7 At present, no guidance has been issued to cover the area outlined. In section 2 of MSC.1/Circ.1404 (Guidelines to Assist in the Investigation of the Crimes of Piracy and Armed Robbery Against Ships), guidance is given for "Securing the Crime Scene and Recovery and Packaging of Exhibits". However, this relates to piracy incidents and is directed at outside investigators. No such guidance exists for masters.

8 The failure to properly secure a crime scene can have serious implications for the full and complete investigation of incidents. Further, any evidence collected from an improperly secured crime scene may be tainted and could lead to either miscarriages of justice or the inability to use the evidence in any prosecution. Further, there have been a number of very unfortunate incidents where victims making allegations of sexual assaults have either harmed themselves or have lost their lives in mysterious circumstances. Therefore, guidance is required for the pastoral care of victims. As any guidance will be applicable to all vessel types and not just those with a doctor on board, guidance on the medical care of victims is of particular importance.

9 In addition to the immediate securing of the scene of the incident and the care of victims, it is of great importance that the investigating agencies are informed of the incident. By informing the investigating authorities, proper coordination between them can be undertaken which will contribute to effective and efficient criminal investigations especially when more than one State seeks to assert jurisdiction.

Analysis of the issue

10 It is not expected that the production of guidance related to the preservation of the crime scene and related issues would involve anything more than an analysis of the technical aspects. For example, if the alleged crime took place in a cabin, then securing the scene may simply involve the closing and locking of the cabin door. It would become more complicated when the alleged crime took place in a space which cannot be sealed, the bridge or galley as examples. However, once again, this should just involve the analysis of the technical issues. But, the multi-jurisdictional concerns are of particular interest to the Committee and these could involve some significant thought. For example, if a sexual assault is reported involving nationals of two different countries on board a ship registered in a third country, whilst alongside in a fourth, then at least four States could be involved in the investigation. In addition, there may be multiple agencies wishing to investigate from each of those countries. Therefore, the guidance will need to address this particular issue.

Analysis of implications

11 The implications of the guidance will be that all parties concerned will have a clear understanding of their duties and responsibilities. This should ensure that the administrative burden on States is reduced as it will be clear which State has the primary responsibility for the investigation of the incident. Further, through the proper collection of evidence, decisions can be made quickly and again this should reduce the workload upon States.

12 The co-sponsors do not believe that there are any negative implications for either developing States or Small Island Developing States (SIDS).

Benefits

13 Through the production of this guidance, the victim would be the principle beneficiary. Although it is likely that the investigating authorities would benefit through the application of the guidance and the master involved would be able to use the guidance in the fulfilment of his duties, it is the victim that should benefit the most. They would know that someone was investigating their allegation in the most consistent manner, that evidence was being collected and preserved which would back up their allegation and that pastoral care would be available to them.

Industry standards

14 Guidance on the investigation of incidents has been produced in an ad hoc manner for in house use by a number of shipping companies. However, there is no single, comprehensive set of guidelines on this issue.

Output

15 As directed by the methods of work, the output should be in SMART terms:

- Specific: Guidance to be produced in a single document to cover the areas outlined.
- Measurable: The output can be measured as it will be in the form of guidance to interested parties.

- Achievable: It is envisaged that such guidance can be achieved by the Committee and that the issues related to multi-jurisdictional concerns can be overcome.
- Realistic: The production of a single set of guidelines is entirely realistic and a proposed draft set of guidelines is submitted separately as document LEG 99/INF.2.
- Time bound: The guidelines should be completed within one session of the Committee. That is, the work should be completed at LEG 101.

Priority/urgency

16 Taking into account the frequency of both the loss of persons at sea and the allegation of serious crimes, and the lack of current guidance, the co-sponsors believe that this is a high-priority item.

Action requested of the Legal Committee

17 The Legal Committee is invited to approve the new unplanned output proposal in paragraph 5, and add it to the biennial agenda of the Committee.
